

Senate Bill No. 1739

CHAPTER 566

An act to amend Sections 8670.10, 8670.29, and 8670.30 of the Government Code, relating to oil spills.

[Approved by Governor September 29, 2008. Filed with
Secretary of State September 29, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1739, Simitian. Oil spill contingency plan.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the discretion of the Governor, to implement activities relating to oil spill response, including drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. The act requires the administrator to periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures.

This bill would specify an alternative procedure if the administrator, the United States Coast Guard, or any other qualified public agency, as determined by the administrator, is unable to attend a drill of the oil spill contingency plan held outside the state. The bill would authorize the administrator to require the owner or operator of the vessel or marine facility to provide for an independent drill monitor to evaluate the drill, who would be required to submit the evaluation to the administrator and the owner or operator. Based upon this evaluation, the administrator would be required to determine whether the drill satisfies the requirements of the act. The bill would require the administrator to adopt regulations to implement these provisions on or before January 1, 2010.

(2) The act requires every owner or operator of specified marine facilities and owners or operators of certain vessels to prepare and implement an oil spill contingency plan containing specified provisions that has been submitted to, and approved by, the administrator. With respect to a marine facility, the act requires the plan to include provisions for training and drills on elements of the plan at least annually and provisions for subjecting all elements of the plan to drills or tests, as specified by the administrator, at least once every 3 years.

This bill would instead require the plan for both those marine facilities and for vessels to include training and drills on all elements of the plan at least annually and subject all elements of the plan to a drill at least once every 3 years.

(3) The act authorizes an oil spill response organization (OSRO) to apply to the administrator for a rating of that OSRO's response capabilities. The

administrator is authorized to require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. The act requires each rated OSRO to satisfactorily complete at least one unannounced drill every 3 years after receiving its rating, and allows for specified drill substitutions.

This bill would instead require the administrator to require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. The bill would also require the administrator to require satisfactory completion of one unannounced drill for each rated OSRO prior to being granted a renewal or prior to reinstatement of a revoked or suspended rating. The bill would limit certain drill substitutions to acts within the previous 3 years.

(4) This bill would incorporate additional changes in Section 8670.30 of the Government Code, proposed by AB 2547, to be operative only if AB 2547 and this bill are both chaptered and become effective on or before January 1, 2009, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 8670.10 of the Government Code is amended to read:

8670.10. (a) (1) Except as provided in subdivision (b), in coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. Each state and local entity, each rated OSRO, and each operator shall cooperate with the administrator in carrying out these drills.

(2) The administrator shall establish performance standards that each operator and rated OSRO shall meet during the drills carried out pursuant to this subdivision. The standards shall include, but are not limited to, a standard for the time allowable for adequate response, and shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist. The standards shall specify the protections that the administrator determines are necessary for any environmentally sensitive area, as defined by the administrator.

(3) The costs incurred by an operator to comply with this section and regulations adopted pursuant to this section are the responsibility of the operator. All costs incurred by a local, state, or federal agency in conjunction

with participation in a drill pursuant to this chapter shall be borne by each respective agency.

(4) After every drill attended by the administrator or his or her representative, that person shall issue a report that evaluates the performance of the participants.

(b) (1) If the administrator, the United States Coast Guard, or any other qualified public agency, as determined by the administrator, is unable to attend a drill of an oil spill contingency plan held outside the state, the administrator may require the owner or operator to provide for an independent drill monitor to evaluate the drill consistent with the requirements of this chapter. The administrator shall adopt regulations to implement this section on or before January 1, 2010.

(2) Within 14 days after the date that the drill specified in paragraph (1) is conducted, the independent drill monitor shall submit the evaluation specified in paragraph (1) to the administrator and owner or operator.

(3) Based on the evaluation submitted pursuant to paragraph (2) and any other applicable requirements of this chapter, the administrator shall determine whether the drill conducted pursuant to this subdivision satisfies the requirements of this chapter.

SEC. 2. Section 8670.29 of the Government Code is amended to read:

8670.29. (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, an owner or operator of a marine facility, small marine fueling facility, or mobile transfer unit, prior to operating in the marine waters of the state or where an oil spill could impact marine waters; and an owner or operator of a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo, before operating in the marine waters of the state, shall prepare and implement an oil spill contingency plan that has been submitted to, and approved by, the administrator pursuant to Section 8670.31. An oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of an oil spill, shall be consistent with the California oil spill contingency plan, and shall not conflict with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

(b) An oil spill contingency plan shall, at a minimum, meet all of the following requirements:

(1) Be a written document, reviewed for feasibility and executability, and signed by the owner or operator, or their designee.

(2) Provide for the use of an incident command system to be used during a spill.

(3) Provide procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened spill, or spill.

(4) Describe the communication plans to be used during a spill.

(5) Describe the strategies for the protection of environmentally sensitive areas.

(6) Identify at least one rated OSRO for each rating level established pursuant to Section 8670.30. Each identified rated OSRO shall be directly

responsible by contract, agreement, or other approved means to provide oil spill response activities pursuant to the oil spill contingency plan. A rated OSRO may provide oil spill response activities individually, or in combination with another rated OSRO, for a particular owner or operator.

(7) Identify a qualified individual.

(8) Provide the name, address, and telephone and facsimile numbers for an agent for service of process, located within the state and designated to receive legal documents on behalf of the owner or operator.

(9) Provide for training and drills on elements of the plan at least annually, with all elements of the plan subject to a drill at least once every three years.

(c) An oil spill contingency plan for a vessel shall also include, but is not limited to, all of the following requirements:

(1) The plan shall be submitted to the administrator at least seven days prior to the vessel entering waters of the state.

(2) The plan shall provide evidence of compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(3) If the oil spill contingency plan is for a tank vessel, the plan shall include both of the following:

(A) The plan shall specify oil and petroleum cargo capacity.

(B) The plan shall specify the types of oil and petroleum cargo carried.

(4) If the oil spill contingency plan is for a nontank vessel, the plan shall include both of the following:

(A) The plan shall specify the type and total amount of fuel carried.

(B) The plan shall specify the capacity of the largest fuel tank.

(d) An oil spill contingency plan for a marine facility shall also include, but is not limited to, all of the following provisions:

(1) Provisions for site security and control.

(2) Provisions for emergency medical treatment and first aid.

(3) Provisions for safety training, as required by state and federal safety laws for all personnel likely to be engaged in oil spill response.

(4) Provisions detailing site layout and locations of environmentally sensitive areas requiring special protection.

(5) Provisions for vessels that are in the operational control of the facility for loading and unloading.

(e) The oil spill contingency plan shall be available to response personnel and to relevant state and federal agencies for inspection and review.

(f) The oil spill contingency plan shall be reviewed periodically and updated as necessary. All updates shall be submitted to the administrator pursuant to this article.

(g) In addition to the regulations adopted pursuant to Section 8670.28, the administrator shall adopt regulations and guidelines to implement this section. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The administrator may establish additional oil spill contingency plan requirements, including, but not limited to, requirements based on the different geographic regions of the state. All regulations and guidelines shall be developed in consultation with the State

Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

SEC. 3. Section 8670.30 of the Government Code is amended to read:

8670.30. (a) An oil spill response organization may apply to the administrator for a rating of that OSRO's response capabilities. The administrator shall establish rating levels for classifying OSROs pursuant to subdivision (b).

(b) Upon receiving a completed application for rating, the administrator shall review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator, which shall include, but is not limited to, all of the following elements:

(1) The geographic region or regions of the state where the OSRO intends to operate.

(2) Timeframes for having response resources on-scene and deployed.

(3) The type of equipment that the OSRO will use and the location of the stored equipment.

(4) The volume of oil that the OSRO is capable of recovering and containing.

(c) The administrator shall not issue a rating until the applicant OSRO completes an unannounced drill. The administrator may call a drill for every distinct geographic area in which the OSRO requests a rating. The drill shall test the resources and response capabilities of the OSRO, including, but not limited to, on water containment and recovery, environmentally sensitive habitat protection, and storage. If an OSRO fails to successfully complete a drill, the administrator shall not issue the requested rating, but the administrator may rate the OSRO at a rating lesser than the rating sought with the application. If an OSRO is denied a requested rating, the OSRO may reapply for rating.

(d) A rating issued pursuant to this section shall be valid for three years unless modified, suspended, or revoked. The administrator shall review the rating of each rated OSRO at least once every three years. The administrator shall not renew a rating unless the OSRO meets criteria established by the administrator, including, at a minimum, that the rated OSRO periodically tests and drills itself, including testing protection of environmentally sensitive sites, during the three-year period.

(e) The administrator shall require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. These demonstrations may be achieved through inspections, announced and unannounced drills, or by any other means.

(f) (1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator may require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified

rating, and shall require satisfactory completion of one unannounced drill for each rated OSRO prior to being granted a renewal or prior to reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources or be owned and controlled by a rated OSRO that are sufficient to meet the spill response planning requirements of the OSRO's client owner or operator. This requirement does not preclude a rated OSRO from bringing in additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual satisfactory spill response performance during the previous three years may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency during the previous three years qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

(h) The costs incurred by an OSRO to comply with this section and the regulations adopted pursuant to this section, including drills called by the administrator, shall be the responsibility of the OSRO. All local, state, and federal agency costs incurred in conjunction with participation in a drill shall be borne by each respective agency.

(i) (1) A rating awarded pursuant to this section is personal and applies only to the OSRO that receives that rating and the rating is not transferable, assignable, or assumable. A rating does not constitute a possessory interest in real or personal property.

(2) If there is a change in ownership or control of the OSRO, the rating of that OSRO is null and void and the OSRO shall file a new application for a rating pursuant to this section.

(3) For purposes of this subdivision, a "change in ownership or control" includes, but is not limited to, a change in corporate status, or a transfer of ownership that changes the majority control of voting within the entity.

(j) The administrator may charge a reasonable fee to process an application for, or renewal of, a rating.

(k) The administrator shall adopt regulations to implement this section as appropriate. At a minimum, the regulations shall appropriately address all of the following:

(1) Criteria for successful completion of a drill.

(2) The amount and type of response resources that are required to be available to respond to a particular volume of spilled oil during specific timeframes within a particular region.

(3) Regional requirements.

(4) Training.

(5) The process for applying for a rating, and for suspension, revocation, appeal, or other modification of a rating.

(6) Ownership and employment of response resources.

(7) Conditions for canceling a drill due to hazardous or other operational circumstances.

(l) Any letter of approval issued from the administrator before January 1, 2002, that rates an OSRO shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance or until January 1, 2003, whichever date occurs later.

SEC. 3.5. Section 8670.30 of the Government Code is amended to read:

8670.30. (a) An oil spill response organization may apply to the administrator for a rating of that OSRO's response capabilities. The administrator shall establish rating levels for classifying OSROs pursuant to subdivision (b).

(b) Upon receiving a completed application for rating, the administrator shall review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator, which shall include, but is not limited to, all of the following elements:

(1) The geographic region or regions of the state where the OSRO intends to operate.

(2) Timeframes for having response resources on-scene and deployed.

(3) The type of equipment that the OSRO will use and the location of the stored equipment.

(4) The volume of oil that the OSRO is capable of recovering and containing.

(5) The dedicated response resources the OSRO controls in the area it intends to operate. For the purposes of this paragraph, "controls" means equipment owned by the OSRO and located in the area and personnel employed by the OSRO and located in the area.

(6) The capability of the OSRO to provide best achievable protection.

(c) The administrator shall not issue a rating until the applicant OSRO completes an unannounced drill. The administrator may call a drill for every distinct geographic area in which the OSRO requests a rating. The drill shall test the resources and response capabilities of the OSRO, including, but not limited to, on water containment and recovery, environmentally sensitive habitat protection, and storage. If an OSRO fails to successfully complete a drill, the administrator shall not issue the requested rating, but the administrator may rate the OSRO at a rating lesser than the rating sought with the application. If an OSRO is denied a requested rating, the OSRO may reapply for rating.

(d) A rating issued pursuant to this section shall be valid for three years unless modified, suspended, or revoked. The administrator shall review the

rating of each rated OSRO at least once every three years. The administrator shall not renew a rating unless the OSRO meets criteria established by the administrator, including, at a minimum, that the rated OSRO periodically tests and drills itself, including testing protection of environmentally sensitive sites, during the three-year period.

(e) The administrator shall require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. These demonstrations may be achieved through inspections, announced and unannounced drills, or by any other means.

(f) (1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator shall require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified rating, and shall require satisfactory completion of one unannounced drill for each rated OSRO prior to being granted a renewal or prior to the reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources. This requirement does not preclude a rated OSRO from bringing in additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual satisfactory spill response performance during the previous three years may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency during the previous three years qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

(h) The costs incurred by an OSRO to comply with this section and the regulations adopted pursuant to this section, including drills called by the administrator, shall be the responsibility of the OSRO. All local, state, and federal agency costs incurred in conjunction with participation in a drill shall be borne by each respective agency.

(i) (1) A rating awarded pursuant to this section is personal and applies only to the OSRO that receives that rating and the rating is not transferable, assignable, or assumable. A rating does not constitute a possessory interest in real or personal property.

(2) If there is a change in ownership or control of the OSRO, the rating of that OSRO is null and void and the OSRO shall file a new application for a rating pursuant to this section.

(3) For purposes of this subdivision, a “change in ownership or control” includes, but is not limited to, a change in corporate status, or a transfer of ownership that changes the majority control of voting within the entity.

(j) The administrator may charge a reasonable fee to process an application for, or renewal of, a rating.

(k) The administrator shall adopt regulations to implement this section as appropriate. At a minimum, the regulations shall appropriately address all of the following:

(1) The level of resources that constitute best achievable protection.

(2) Criteria for successful completion of a drill.

(3) The amount and type of response resources that are required to be available to respond to a particular volume of spilled oil during specific timeframes within a particular region.

(4) Regional requirements.

(5) Training.

(6) The process for applying for a rating, and for suspension, revocation, appeal, or other modification of a rating.

(7) Ownership and employment of response resources.

(8) Conditions for canceling a drill due to hazardous or other operational circumstances.

(l) A letter of approval issued from the administrator before January 1, 2002, that rates an OSRO shall be deemed to meet the requirements of this section for three years from the date of the letter’s issuance or until January 1, 2003, whichever date occurs later.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 8670.30 of the Government Code proposed by both this bill and AB 2547. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 8670.30 of the Government Code, and (3) this bill is enacted after AB 2547, in which case Section 3 of this bill shall not become operative.